

**United States Bankruptcy Court
Central District of California**

Los Angeles

Judge Ernest Robles, Presiding

Courtroom 1568 Calendar

Tuesday, February 12, 2013

Hearing Room 1568

10:00 am

2:12-43888 Elizabeth R. Hernandez

Chapter 7

#8.00 Hearing: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 27612 Tarrasa Drive, Rancho Palos Verdes, California 90275 . Exhibit) (Silverman, Timothy)

fr. 1-2-13; 2-11-13

Docket #: 11

Matter Notes:

2/12/2013

Tentative vacated.

Continued on the record to 3/20/13 at 10:00 a.m. However, this date was incorrect. The correct continued date is 3/18/13 at 10:00.

Court to provide notice to the parties of the correct date.

POST TO CIAO.

Tentative Ruling:

For 2/12/13:

Tentative Ruling:

This Motion was continued to allow Movant to provide evidence that it is the real party in interest. As of 2/6/13, the docket indicates that Movant has not filed such evidence. Based on the foregoing, as noted in the previous tentative ruling, Movant does not appear as the original payee on the copy of the note attached as Exhibit 2 to the Motion, and there is no endorsement to Movant on the Note. Consequently, since there is no evidence that Movant is entitled to enforce the Note, the Court DENIES the Motion based on Movant's lack of standing to seek relief from stay.

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No appearance is required if submitting on the Court's tentative ruling. If submitting on the tentative, please contact Amanda Farfel or Helene Kaya, the Judge's law clerks, at (213) 894-1522. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified. If you wish to make a telephonic appearance, contact Court Call at (888) 882-6878, ext. 188 no later than one hour before the hearing.

12/26/2012

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). Movant seeks relief from stay with respect to real property located at 27612 Tarrasa Drive, Rancho Palos Verdes, CA 90275. In opposition, Debtor argues that Movant lacks standing to bring this Motion and is not the real party in interest. Your-Best-Rate Financial LLC ("Best Rate") was the original beneficiary under the subject deed of trust and the original payee on the underlying note. Debtor contends:

- (1) There is no evidence regarding the rights Best Rate and Citimortgage had in the note and deed of trust which were purportedly transferred to Movant pursuant to the Assignment of Deed of Trust attached to the Motion as Exhibit 3. There also is no evidence of Best Rates relationship with MERS.
- (2) There is no endorsement to Movant on the copy of the Note attached as Exhibit 2 to the Motion. The "Note and Allonge endorsement are clearly made payable to Citi, not Movant. . . . It appears that CitiMortgage, Inc., not the Movant may be the Real Party in Interest." Memorandum of Points and Authorities in Support of Response at 2.
- (3) The Assignment of the Deed of Trust is signed by Todd Graves as Assistant Secretary of Mortgage Electronic Registration Systems. Debtor asserts that there is evidence that Todd Graves is employed by Movant.

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The Ninth Circuit Bankruptcy Appellate Panel has provided:

a creditor can establish that it is a 'party in interest' with standing to seek relief from stay by showing that it is a person entitled to enforce the note, or that it holds some ownership or other interest in the note amounting to a colorable claim. In relevant part, a party is a person entitled to enforce the note if it is a 'holder' of the note, as defined in UCC § 1-201(b)(21)(A). A 'holder' includes a 'person in possession of a negotiable instrument that is payable . . . to an identified person that is the person in possession.' UCC § 1-201(b)(21)(A). In turn, a negotiable instrument has been made payable to an identified person when it contains a 'special indorsement' specifying that the instrument is payable to that identified person. See UCC § 3-205(a).

Tikhonov v. The Bank of New York Mellon Trust Co., N.A. (In re Tikhonov), 2012 WL 6554742 *8 (9th Cir. BAP) (citations omitted).

In the instant case, the copy of the deed of trust attached as Exhibit 1 to the Motion clearly provides that MERS is the nominee for the original lender, Best Rates. In addition, the rights purportedly transferred pursuant to the Assignment of the Deed of Trust are the beneficial interests defined in the assigned deed. Finally, Debtor provides an unauthenticated document regarding Todd Graves' alleged position with the Movant. Based on the foregoing, the Court rejects Debtor's contentions #s 1 and 3 above as bases for denying the Motion.

Movant, however, does not appear as the original payee on the copy of the note attached as Exhibit 2 to the Motion. In addition, there is no endorsement to Movant on the Note. Consequently, there currently is no evidence of Movant's standing to pursue this Motion. Based on the foregoing, the Court CONTINUES the Motion to **January 14, 2013 at 10:00 a.m.** to give Movant an opportunity to provide evidence of its ability to enforce the note. Movant is to give notice of the continued hearing to all interested parties.

No appearance is required if submitting on the Court's tentative ruling. If submitting on the tentative, please contact Amanda Farfel or Helene Kaya, the Judge's law clerks, at (213) 894-1522. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified. If you wish to make a telephonic appearance, contact Court Call at (888) 882-6878, ext. 188 no later than one hour before the hearing.

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Party Information

Debtor(s):

Elizabeth R. Hernandez

Represented By

Robert A Bonito

Movant(s):

PNMAC Mortgage Opportunity Fund

Represented By

Timothy J Silverman

Trustee(s):

Brad D Krasnoff (TR)